

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6080

PETITION OF MICHAEL WOHL
(Hearing held June 29, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, August 10, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes the construction of a new single-family dwelling that requires a 4.60 foot variance as it is within 10.40 feet of the streetline setback. The required setback is fifteen (15) feet.

Kinley R. Dumas, Esquire, and Richard Rosen, an architect, represented Michael Wohl and Cherry Young, property owners, at the public hearing.

The subject property is Lot 1, Block F, Edgewood Subdivision, located at 5520 Glenwood Road, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No. 0700656873).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a new single-family dwelling.
2. Ms. Dumas stated that the subject property has an existing house that the petitioners propose to demolish and reconstruct a new house. Ms. Dumas stated that the subject property is located at the intersection of Glenwood Road and Jefferson Street. Jefferson Street is a dedicated, but unbuilt, right-of-way that has a paved 4-foot walking path.
3. Ms. Dumas stated that a storm drain is located northwest of the subject property and that the storm drain prevents access to or new construction being located in the northwest section of the petitioners' lot. Ms. Dumas stated that there are several mature trees both on and off the petitioners' lot that prevent new construction in those areas

without damage to the root system of the trees. See, Exhibit No. 11 [rendered site plan].

4. Mr. Rosen testified that the lot's topography slopes upward from its northwest corner to its southeast corner, with a very large grade change on the property. Mr. Rosen testified that the property has a number of mature trees and that the trees severely restrict the property's buildable envelope. Mr. Rosen testified that the size of the petitioner's lot is 8,325 square feet, but that the storm drain restricts the placement of the house and driveway on the lot.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot has no exceptional topographical or other conditions peculiar to the property. The Board further finds that the petitioners' lot size exceeds the minimum lot size for the zone and that the lot is similar in shape and size to the other lots in the neighborhood. See, Exhibit No. 8 [zoning vicinity map].

The Board notes that neither the existing improvements to the lot nor its external design are circumstances that the Board can take into account in considering an application for the grant of a variance. *Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 4.60 feet from the required fifteen (15) foot streetline setback for the construction of a new single-family dwelling is denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 10th day of August, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.